IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE

WRIT PETITION NO. 376 OF 1993

Century Textiles & Industries
Ltd. and Anr. .. Petitioners

Vs.

Ulhasnagar Municipal Corporation .. Respondent

Mr. E.P. Bharucha, Sr. Counsel with Mr. Vaibhav Jogalekar with Mr. Arun Siwach i/b M/s. Amarchand & Mangaldas & Shroff & Co. for Petitioners.
Mr. R.M. Sawant for Respondent.

WITH
WRIT PETITION NO. 1027 OF 1997

Century Rayon and anr. .. Petitioners

Vs.

Ulhasnagar Municipal Corporation
and ors. .. Respondents

Mr. E.P. Bharucha, Sr. Counsel with Mr. Vaibhav Jogalekar with Mr. Arun Siwach i/b M/s. Amarchand & Mangaldas & Shroff & Co. for Petitioners.
Mr.R.M. Sawant for Respondent Nos.1 and 2.
Mr.V.S. Gokhale, AGP for Respondent No.4.

CORAM : B. H. MARLAPALLE &
D. B. BHOSALE,JJ.

Date : April 25, 2006.

P.C.:

1. In Writ Petition No.376 of 1993 the petitioner no.1-company has sought restraining orders against Ulhasnagar Municipal Council, which was an A Class Municipal Council at the relevant time, retraining it and/or its servants or officers from recovering octroi

duty on the import of, (i) Rayon Grade Wood Cellulose Pulp, (ii) Sulphur, (iii) Zinc Oxide, (iv) Polyethylene Glycol and (v) Caustic Soda at rates in excess of 1.25% ad-valorem. In addition, the petitioners are praying for directions for refund of the amount of Rs.47,97,720/- being the excess amount illegally collected by the respondents from the petitioners as octroi in respect of the said products which are imported as raw material for captive consumption with interest thereon at 18% per annum from the date of collection of the money till the date of payment.

2. In Writ Petition No.1027 of 1997 the petitioners have challenged the order contained in the letter dated 30/04/1997 (Exh."L"), and the application of the revised octroi rules pursuant to the establishment of the Ulhasnagar Municipal Council into Ulhasnagar Municipal Corporation with effect from 21/10/1996. It is pointed out by referring to the interlocutory order passed in Writ Petition No.1027 of 1997 that the octroi draft rules were submitted to the State Government for approval and now it has informed that the said approval was received on or about 15/4/1997 and thereafter the petitioners have been paying octroi as per the rates approved by the State

Government. The dispute in the second petition is thus remaining to be resolved for the period from October, 1996 to 15th April 1997.

3. So far as payment of octroi duty on the import of Caustic Soda and other chemicals is concerned, there is no dispute between the parties any more and the dispute remains only in respect of the imported Rayon Grade Wood Cellulose Pulp on account of the interlocutory order passed in Writ Petition No.376 of 1993 on 18/2/1993. The petitioners were directed to pay octroi duty under Entry 86 as against the contentions of the respondent-corporation that the duty was chargeable either under Entry 79b or 79c. This payment was without prejudice to the rights and contentions of both the parties and the petitioners would not claim any further concession relying upon the said interlocutory order. The respondents were required to refund the excess amount to the petitioners with interest in the event the petitioners succeeded in the writ petition and the rate of interest would be determined at the time of hearing of the petition.

4. Whether the Rayon Grade Wood Cellulose Pulp falls under Entry No.86 or Entry No.79b/79c is an

issue which cannot be decided by looking at the said product which is utilised by the petitioner no.1 for its own captive consumption i.e. as a raw material for the manufacture of Rayon. The erstwhile Municipal Council and the present Municipal Corporation claimed that the material imported is not Rayon Grade Wood Cellulose Pulp but in fact it is a paper-board and, therefore, chargeable to octroi duty under Entry No.79b or 79c. It is not possible for us to determine whether the said raw material would fall under Entry No.86 or Entry No.79b/79c by mere visual look and the said issue will have to be decided on the basis of the evidence that the parties lead, including the Expert's opinion, if so required.

5. Under Section 406 of the Bombay Provincial Municipal Corporations Act, 1949 appeals against any rateable value or tax fixed or charged by the Municipal Corporation shall be heard and determined by the Judge. Sub-section 2 of Section 406 provides for limitation. Mr. Bharucha, the learned Sr. Counsel appearing for the petitioner-company states that it is willing to approach the learned Judge by filing an appeal under Section 406 of the B.P.M.C. Act, 1949 so that the issue regarding classification is settled in respect of the first petition for the entire period

covered by the impugned demand and in respect of the second petition for the period from October, 1996 to 15th April, 1997 and in the meanwhile the interlocutory protection granted by this court would be continued for a specific period, provided the appeal is filed within the time schedule set out.

6. We, therefore, dispose these petitions by granting liberty to the petitioner-company to file an appeal under Section 406 of the B.P.M.C. Act, 1949 within a period of four weeks from today and if such an appeal is filed, the respondent-corporation shall also file its reply on receiving the notice within a period of six weeks. The appeal shall be thereafter decided as expeditiously as possible and preferably within a period of three months after the written statement is filed by the corporation and on its own merits. We make it clear that the issue of limitation will not come in the way of the petitioner-company if the appeal is filed within a period of four weeks from today.

7. We make it clear that the order passed by this court on 18/2/1993 will apply in the event the petitioners succeed in the appeal, the issue regarding refund of the excess amount to the petitioners with

interest shall be open to be decided as per law. The rate of interest will have to be determined by the Lower Appellate Court while deciding the appeal, subject to the legal submissions that the Corporation may place before the Court. The Bank Guarantee will be continued to be renewed from time to time with the Registry of this Court till the disposal of the appeal.

(D.B. Bhosale,J.) **(B.H. Marlapalle, J.)**